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14 UNITED STATES OF AMERICA and)
the STATE OF CALIFORNIA ex rel)
15 MIKE STIERLI,)
16 Relator Plaintiff,)
17 v.)
18 SHASTA SERVICES, INC., dba)
TIMBERWORKS; and DOES 1 through)
19 50, inclusive,)
20 *Qui Tam* Defendants.)

CIV. S-04-1955 MCE PAN-JFM

UNITED STATES OF AMERICA'S
JOINDER IN MOTIONS TO DISMISS
FILED BY THE STATE OF
CALIFORNIA AND DEFENDANT;
UNITED STATES' MOTION TO
DISMISS FEDERAL FALSE CLAIMS
ACT CLAIMS

DATE: May 1, 2006
TIME: 9:00 a.m.
Courtroom: 3

23 I. INTRODUCTION

24 The United States of America, the real party in interest, moves for dismissal of the
25 federal False Claims Act ("FCA") claims. The United States also joins in the Motion to
26 Dismiss the California False Claims Act Claims filed by the State of California, and the
27 Statement of Non-Opposition to State of California's Motion to Dismiss the California
28 False Claims Act Claims and request to dismiss this action in its entirety filed by

1 Defendant Shasta Services, Inc. dba Timberworks (hereafter "Timberworks").

2 II. STATEMENT OF FACTS

3 The United States incorporates by reference the facts set forth in the State of
4 California's Memorandum of Points and Authorities in Support of Motion to Dismiss the
5 California False Claims Act Claims (Document 47 on Court docket sheet) at pp. 2:14-5:2.

6 Of particular importance to the United States' motion is the fact that the federal
7 agency involved in this matter, the U.S. Department of Transportation, notified Cal Trans
8 that the project was ineligible for Federal-aid participation. Id., at 4:17-19. This means
9 that no federal funds were spent on this program; thus, there was no monetary loss to the
10 federal government.

11 In addition, the United States has found no evidence that defendant defrauded
12 either real party in interest, the federal government or the State of California.

13 III. ARGUMENT

14 A. The United States has the right to seek dismissal of this action even though
15 it did not intervene.

16 Under Section 3730(c)(2)(A) of the False Claims Act (31 U.S.C. § 3729 et seq.)
17 the United States may dismiss an action in its name:

18 notwithstanding the objections of the person initiating the
19 action if the person has been notified by the Government of
20 the filing of the motion and the court has provided the person
with an opportunity for a hearing on the motion.

21 The purpose of the hearing is simply to give the relator a formal opportunity to
22 convince the government not to end the case. Swift v. United States, 318 F.3d 250, 253
23 (D.C. Cir. 2003). The judiciary does not have general oversight of the government
24 decision's whether to continue litigation brought in its name because such decisions are
25 committed to the sound discretion of the Executive Branch. Id. Executive Branch
26 decisions not to prosecute a case are presumed to be unreviewable. Swift, at 252.

27 The United States can move to dismiss a FCA action even though it did not
28 intervene in the litigation. Swift, at 251-52; Ridenour v. Kaiser-Hill Company, LLC, 397

1 F.3d 925, 932 (10th Cir. 2005); United States ex rel. Sequoia Orange Co. v. Baird-Neece
2 Packing Corp. et al., 151 F.3d 1139, 1144 (9th Cir. 1998 (government has broad power to
3 dismiss or settle an action over relator's objections if relator given notice and hearing)).

4 B. The government has good cause for dismissing this action.

5 Although the False Claims Act (FCA) statute does not set forth standards for
6 dismissal, in this Circuit the Court conducts a two step analysis to test the justification for
7 dismissal:

- 8 1. Is there a valid government purpose in dismissing the case?
- 9 2. Is there a rational relation between dismissal and accomplishment of the
10 purpose?

11 Sequoia Orange Co. at 1145.

12 In the instant case, the government's justification for dismissing this case is valid.
13 To be actionable under the FCA, a defendant must knowingly present a claim for payment
14 that is either fraudulent or simply false. "In short, the claim must be a lie." Hindo v.
15 University of Health Sciences/The Chicago Medical School, 65 F.3d 608, 613 (7th Cir.
16 1995). While relator alleges the defendant failed to use best efforts to include bids from
17 disadvantaged business enterprises ("DBE's") in its bid to Cal Trans, and the federal
18 Highway Administration determined that defendant had not documented adequate efforts
19 to meet the DBE goals (Exh. A to Timberwork's Statement of Non-Opposition filed on
20 April 12, 2006, as Document 49 on the Court's Docket), this is a far cry from finding any
21 fraud on Timberworks' part. Indeed, the federal regulations at issue herein expressly
22 highlight the subjective nature of "good faith" efforts; "We emphasize, however, that your
23 determination concerning the sufficiency of the firm's good faith efforts is a judgment
24 call: meeting quantitative formulas is not required." 49 C.F.R. Pt. 26, App. A, II.

25 The Attorney General diligently investigated the relator's claims, as required by 31
26 U.S.C. § 3730(a), but found no evidence that defendant had submitted a false claim to
27 either the State of California or the federal government, i.e. no lie is involved in this case.

28 Moreover, this case involves no loss to the federal government, yet this office has

1 been required to respond to frivolous discovery requests from relator for investigative
2 files compiled by the U.S. Attorney's office, documents that are privileged under a variety
3 of recognized privileges. These reasons for dismissal easily satisfy the Sequoia Orange
4 standard. Swift, 318 F.3d at 254 (small potential recovery, complying with discovery
5 request, and being forced to spend time and effort on a small case instead of using
6 resources for more significant cases "easily" satisfy Sequoia standards).

7 Relator's counsel has even threatened to seek sanctions against undersigned
8 counsel if she refuses to turn over privileged documents, arguing that he is the
9 government's attorney and has a right to inspect his "client's" files. This is ludicrous, and
10 this waste of the government's resources that are being diverted from significant cases
11 with merit must stop.

12 III. CONCLUSION

13 For the reasons set forth above, and in the motions filed by the State of California
14 and the defendant, the United States requests that this action be dismissed in its entirety.

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16 DATED: April 17, 2006

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19 By: /s/ kristin s. door
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